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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 DOMINIQUE MERRIMAN,

12 Plaintiff,

13 v.

14 GENA JONES, et al.,

15 Defendants.
16

No. 2:22-CV-0877-DAD-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

19 The Court is required to screen complaints brought by prisoners seeking relief
20 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C.
21 § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or
22 malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief
23 from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover,
24 the Federal Rules of Civil Procedure require that complaints contain a "... short and plain
25 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This
26 means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d
27 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the
28 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it

1 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege
2 with at least some degree of particularity overt acts by specific defendants which support the
3 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
4 impossible for the Court to conduct the screening required by law when the allegations are vague
5 and conclusory.

6 Here, Plaintiff claims that Defendants have deprived him of personal property.
7 See ECF No. 1, pgs. 5-6.

8 The Due Process Clause protects prisoners from being deprived of life, liberty, or
9 property without due process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). In order to
10 state a claim of deprivation of due process, a plaintiff must allege the existence of a liberty or
11 property interest for which the protection is sought. See Ingraham v. Wright, 430 U.S. 651, 672
12 (1977); Bd. of Regents v. Roth, 408 U.S. 564, 569 (1972). Due process protects against the
13 deprivation of property where there is a legitimate claim of entitlement to the property. See Bd.
14 of Regents, 408 U.S. at 577. Protected property interests are created, and their dimensions are
15 defined, by existing rules that stem from an independent source – such as state law – and which
16 secure certain benefits and support claims of entitlement to those benefits. See id.

17 Where a prisoner alleges the deprivation of a liberty or property interest caused by
18 the random and unauthorized action of a prison official, there is no claim cognizable under 42
19 U.S.C. § 1983 if the state provides an adequate post-deprivation remedy. See Zinermon v. Burch,
20 494 U.S. 113, 129-32 (1990); Hudson v. Palmer, 468 U.S. 517, 533 (1984). A state's post-
21 deprivation remedy may be adequate even though it does not provide relief identical to that
22 available under § 1983. See Hudson, 468 U.S. at 531 n.11. A due process claim is not barred,
23 however, where the deprivation is foreseeable and the state can therefore be reasonably expected
24 to make pre-deprivation process available. See Zinermon, 494 U.S. at 136-39. An available
25 state common law tort claim procedure to recover the value of property is an adequate remedy.
26 See id. at 128-29.

27 Because Plaintiff has an available state common law tort claim remedy, he fails to
28 state a cognizable claim in this action.

1 Because it does not appear possible that the deficiencies identified herein can be
2 cured by amending the complaint, Plaintiff is not entitled to leave to amend prior to dismissal of
3 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

4 Based on the foregoing, the undersigned recommends that this action be dismissed
5 for failure to state a claim upon which relief can be granted.

6 These findings and recommendations are submitted to the United States District
7 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
8 after being served with these findings and recommendations, any party may file written
9 objections with the court. Responses to objections shall be filed within 14 days after service of
10 objections. Failure to file objections within the specified time may waive the right to appeal. See
11 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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13 Dated: November 18, 2022



14 DENNIS M. COTA
15 UNITED STATES MAGISTRATE JUDGE
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